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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,401	07/30/2001	John P. Moyna	CJM-P-01-001	4664
29013	7590	04/03/2006	EXAMINER	
PATENTS+TMS, P.C. 2849 W. ARMITAGE AVE. CHICAGO, IL 60647			BATSON, VICTOR D	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/918,401

Applicant(s)

MOYNA, JOHN P.

Examiner

Victor Batson

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/12/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-21, 23-27, 29, 30 and 32-34 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-9, 22, 28, 31 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,6-9,22,31 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayse (2,905,254).

Hayse discloses an apparatus comprising a frame 9, an axle 17, a cylinder 76, discs 52, a controller (not shown but considered the controller that controls cylinder 76), wherein the frame pivots with respect to the axle. The examiner notes that the apparatus frame is pivotally connected (94) to the draw bar of the tractor. This type of connection allows the apparatus frame to pivot relative to the tractor that it is connected to. Therefore, if the tractor drives over an undulation, obstacle or depression, this would cause the frame to pivot relative to the tractor with the frame in turn pivoting about axle 17. For example, if the tractor drives over an undulation, when the rear of the tractor moves upwardly, the front of the frame would also move upwardly, and the frame would pivot about axle 17 with the rear of the trailer moving downwardly. The opposite would obviously be true if the tractor and frame were to travel over a depression. Hayse is therefore considered to meet the claimed limitation of the movement of the first end of the frame in a first direction resulting in movement of the second end of the frame in an opposite direction. Concerning claim 2, cylinder 76 is considered a front cylinder.

Claims 28,35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Kinzenbaw et al. (5,346,019).

Kinzenbaw et al. discloses an apparatus for separating soil including a frame, a plurality of discs, a pillar 118, a column 100b inside the pillar, liner 180b and plates 182b inside the pillar supporting the column as shown in figures 3d & 6. The examiner notes that front cylinder 80 moves to adjust the angle of the frame relative to the soil as viewed from above (see figure 2 where the frame is pivoted 90 degrees). Additionally, it is noted that the frame 20 has a body defined by a plane as shown in figure 3d. Furthermore, figure 1 shows discs positioned on opposite sides of the tires as does figure 2 in phantom. Concerning claim 35, the axle is considered member 132 or the wheel axle (see 164, fig. 4).

#### ***Allowable Subject Matter***

Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10-21,23-27,29,30,32-34 are allowed.

#### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Concerning claim 28, it is the examiner's position that Kinzenbaw et al., shows discs positioned on opposite sides of the tires in figures 1 & 2.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 30, 2006



Victor Batson  
Primary Examiner  
Art Unit 3671